

August 17, 2004

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, CA 90012

Dear Supervisors:

**AWARD OF CUSTODIAL SERVICES CONTRACT (AREA 3)
FOR THE COUNTY OF LOS ANGELES PUBLIC LIBRARY
(DISTRICTS 2, 4) (3-VOTE MATTER)**

IT IS RECOMMENDED THAT YOUR BOARD:

1. Make a finding that services can be performed more economically by an independent contractor.
2. Approve and instruct the Chairman to sign a three (3) year agreement, with two (2) one year renewal options and/or six (6) month-to-month extensions, not to exceed a total of six (6) months with Maxim Building Care, Inc. at an annual cost of \$163,269.84 for provision of custodial services in the Public Library's Custodial Area 3. This agreement shall become effective upon your Board's approval or September 1, 2004 whichever is later.
3. Authorize the contractor to proceed with the work in accordance with the contract's specifications, terms, conditions, and requirements.
4. Authorize the County Librarian to sign agreement modifications created by increases or decreases in the number of facilities over the term of the agreement, and exercise the renewal options and/or month-to-month extensions as set forth in the agreement for a period not to exceed six months, if needed.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

This is to recommend that the Board approve the award of a contract for custodial services to Maxim Building Care, Inc. as part of a continuing effort by the Department to provide the best possible service to the public at the lowest responsible cost. This recommendation is submitted based upon a finding that the provision of custodial services for the affected County facilities can be performed more economically by an independent contractor.

The recommended contract award is needed to continue the provision of custodial services at twelve (12) libraries located in the Public Library's Custodial Area 3 (South and West County Regions) as detailed in Attachment A. The current contract with Pacific Sun Maintenance will expire on August 31, 2004.

Implementation of Strategic Plan Goals

Approval of the recommended award is consistent with the County's Strategic Plan in the areas of service excellence, fiscal integrity, and organizational effectiveness.

FISCAL IMPACT/FINANCING

The recommended contractor's annual cost of \$163,269.84 represents a cost savings of \$82,726 (34%) over the estimated County cost (including start-up costs) to perform similar services for the first year. The attached cost savings are calculated based on the Revised Proposition A Contract Cost Format developed by the County Auditor-Controller's guidelines. The proposed contract does not include any cost-of-living increases.

The cost for this contract will be paid from existing funds included in the Department's operating budget.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

Under the provisions of Section 2.121.250 through Section 2.121.420 of the Los Angeles County Code as amended, proposals were solicited for the provision of custodial services in the Public Library's Custodial Service Area 3. All requirements of County Code Section 2.12.380 have been met and there is no conflict of interest as specified in County Code Section 2.121.295. On final analysis and consideration of an award, the contractor was selected without regard to gender, race, color, creed, or national origin.

This contract is in compliance with the mandatory living wage requirements as set forth in Los Angeles County Code Chapter 2.201 (Living Wage Program). The Department has evaluated and determined that the contractor fully complies with the requirements of the Living Wage Program and the Contractor has certified that it will comply with all terms, conditions, and requirements of the County's Living Wage Program and agrees to pay its full-time employees providing County services a living wage. In addition, the contractor agrees to notify and assist its employees with the Federal Earned Income Tax Credit application process and is required and has agreed to consider qualified GAIN/GROW participants for employment openings, and comply with the Jury Duty Ordinance, the Safely Surrendered Baby Law and the County's Child Support Compliance Program.

The contract includes all currently required provisions and has been properly executed by the contractor. County Counsel has reviewed and approved this contract as to form.

CONTRACTING PROCESS

On April 2, 2004, proposals were solicited from the attached Public Library's proposers list, which includes contractors listed on the County's Office of Affirmative Action Compliance Community Business Enterprise (CBE) Database. Advertisements were placed in the Los Angeles Times, The Sentinel, and a chain of bilingual community ethnic newspapers published by The Eastern Group. The solicitation information was also made available to prospective contractors on the Internet through the County of Los Angeles web site. The CBE information is summarized on the attached documents.

The mandatory proposer's conference was held on April 20, 2004. Contractors were informed of the County's Living Wage Program and Contractor Responsibility and Debarment provisions. Twelve (12) proposals were received by the Public Library on May 10, 2004. Three (3) proposals were rejected as non-responsive, and the Public Library reviewed and evaluated nine (9) proposals. Proposals were rated on the following criteria: proposer's qualifications; proposer's approach to providing required services; and cost.

The Public Library has reviewed available resources to assess the proposed contractor's past performance, any history of labor law violations, and any negative experiences with County contracts.

The State Labor Commissioner's Office reports finding no labor/wage violations. Maxim Building Care, Inc. will pay its employees a living wage of not less than \$9.46 per hour. Maxim also provides employees with paid sick, holidays, fourteen (14) days of paid annual vacation and on an annual basis a minimum of five (5) days of regular pay for actual jury service for full time employees. The Proposition A Contracting – Employee Wages & Benefits form summarizing and comparing the Contractor's wages and benefits to those of the County is attached.

The Department determined, through the Request for Proposals process, that these services can be performed more economically by an independent contractor, and recommends awarding a contract to Maxim Building Care, Inc. The recommended contractor was the highest ranked proposer, submitted the most responsive, responsible, and lowest cost proposal.

IMPACT ON CURRENT SERVICES

Award of this contract will allow the Public Library to continue providing custodial services without interruption to the affected library facilities.

CONCLUSION

The custodial services provided under the recommended contract are essential to Public Library operations at the affected facilities.

Respectfully submitted,

Margaret Donnellan Todd
County Librarian

MDT:DF:RG:TVF

Attachments

c: Chief Administrative Officer
County Counsel
Executive Officer, Board of Supervisors
Auditor-Controller
Office of Affirmative Action Compliance



CONTRACT

BY AND BETWEEN

COUNTY OF LOS ANGELES

AND

MAXIM BUILDING CARE, INC.

FOR

CUSTODIAL SERVICES

AREA 3

**CONTRACT PROVISIONS
CUSTODIAL SERVICES AREA 3
TABLE OF CONTENTS**

PARAGRAPH	TITLE	PAGE
RECITALS.....		1
1.0	APPLICABLE DOCUMENTS.....	2
2.0	DEFINITIONS	3
3.0	WORK.....	4
4.0	TERM OF CONTRACT.....	4
5.0	CONTRACT SUM	4
6.0	ADMINISTRATION OF CONTRACT- COUNTY	7
6.1	COUNTY'S PROJECT DIRECTOR	7
6.2	COUNTY'S PROJECT MANAGER	7
6.3	COUNTY'S CONTRACT PROJECT MONITOR.....	8
7.0	ADMINISTRATION OF CONTRACT - CONTRACTOR.....	8
7.1	CONTRACTOR'S PROJECT MANAGER.....	8
7.2	CONTRACTOR'S STAFF	8
7.3	CONTRACTOR STAFF IDENTIFICATION.....	9
7.4	EMPLOYEE CRIMINAL RECORD.....	9
7.5	BACKGROUND & SECURITY INVESTIGATIONS	10
7.6	EMPLOYMENT ELIGIBILITY VERIFICATION.....	11
7.7	CONFIDENTIALITY	11
8.0	TERMS AND CONDITIONS	12
8.1	ASSIGNMENT AND DELEGATION.....	12
8.2	AUTHORIZATION WARRANTY.....	12
8.3	BUDGET REDUCTIONS	12
8.4	CHANGE NOTICES AND AMENDMENTS.....	13
8.5	COMPLAINTS.....	14
8.6	COMPLIANCE WITH APPLICABLE LAW	15
8.7	COMPLIANCE WITH CIVIL RIGHTS LAWS	15
8.8	COMPLIANCE WITH DISPLACED JANITOR OPPORTUNITY ACT.....	16
8.9	COMPLIANCE WITH THE COUNTY'S JURY SERVICE PROGRAM	16
8.10	COMPLIANCE WITH THE COUNTY'S LIVING WAGE PROGRAM.....	18
8.11	CONFLICT OF INTEREST	28
8.12	CONSIDERATION OF HIRING COUNTY EMPLOYEES TARGETED FOR LAYOFF/RE-EMPLOYMENT LIST	29
8.13	CONSIDERATION OF HIRING GAIN/GROW PROGRAM PARTICIPANTS.....	29

**CONTRACT PROVISIONS
CUSTODIAL SERVICES AREA 3
TABLE OF CONTENTS**

PARAGRAPH	TITLE	PAGE
8.14	CONTRACTOR'S RESPONSIBILITY AND DEBARMENT	30
8.15	CONTRACTOR'S ACKNOWLEDGEMENT OF COUNTY'S COMMITMENT TO CHILD SUPPORT ENFORCEMENT	32
8.16	CONTRACTOR'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM.....	32
8.17	COUNTY'S QUALITY ASSURANCE PLAN.....	33
8.18	DAMAGE TO COUNTY FACILITIES, BUILDINGS OR GROUNDS	33
8.19	EMPLOYMENT ELIGIBILITY VERIFICATION.....	33
8.20	FACSIMILE REPRESENTATIONS	34
8.21	FAIR LABOR STANDARDS	34
8.22	GOVERNING LAW, JURISDICTION, AND VENUE	35
8.23	INDEPENDENT CONTRACTOR STATUS	35
8.24	INDEMNIFICATION	36
8.25	GENERAL INSURANCE REQUIREMENTS	36
8.26	INSURANCE COVERAGE REQUIREMENTS.....	39
8.27	LIQUIDATED DAMAGES	40
8.28	MOST FAVORED PUBLIC ENTITY.....	41
8.29	NONDISCRIMINATION AND AFFIRMATIVE ACTION	41
8.30	NON EXCLUSIVITY.....	43
8.31	NOTICE OF DELAYS	43
8.32	NOTICE OF DISPUTES	43
8.33	NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME CREDIT	43
8.34	NOTICES	44
8.35	PUBLIC RECORDS ACT.....	44
8.36	PUBLICITY.....	45
8.37	RECORD RETENTION AND INSPECTION/AUDIT SETTLEMENT	45
8.38	RECYCLED BOND PAPER.....	47
8.39	SAFELY SURRENDERED BABY LAW	47
8.40	SUBCONTRACTING	48
8.41	TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN CHILD SUPPORT COMPLIANCE.....	49

**CONTRACT PROVISIONS
CUSTODIAL SERVICES AREA 3
TABLE OF CONTENTS**

PARAGRAPH	TITLE	PAGE
8.42	TERMINATION FOR CONVENIENCE	49
8.43	TERMINATION FOR DEFAULT	50
8.44	TERMINATION FOR IMPROPER CONSIDERATION	53
8.45	TERMINATION FOR INSOLVENCY	54
8.46	TERMINATION FOR NON-ADHERENCE OF COUNTY LOBBYIST ORDINANCE.....	54
8.47	TERMINATION FOR NON-APPROPRIATION OF FUNDS	55
8.48	VALIDITY	55
8.49	WAIVER	55
8.50	WARRANTY AGAINST CONTINGENT FEES.....	55
	SIGNATURES.....	57

EXHIBITS FOR CONTRACT

- A STATEMENT OF WORK
- B PRICING SCHEDULE
- C CONTRACTOR'S PROPOSED SCHEDULE
- D CONTRACTOR'S EEO CERTIFICATION
- E COUNTY'S ADMINISTRATION
- F CONTRACTOR'S ADMINISTRATION
- G FORMS REQUIRED AT THE TIME OF CONTRACT EXECUTION**
 - G1 CONTRACTOR EMPLOYEE ACKNOWLEDGMENT,
CONFIDENTIALITY, AND COPYRIGHT ASSIGNMENT AGREEMENT
 - G2 CONTRACTOR NON-EMPLOYEE ACKNOWLEDGMENT,
CONFIDENTIALITY AND COPYRIGHT ASSIGNMENT AGREEMENT
- H JURY SERVICE ORDINANCE
- PROP A - LIVING WAGE PROGRAM DOCUMENTS**
 - I LIVING WAGE ORDINANCE
 - J MONTHLY CERTIFICATION FOR APPLICABLE HEALTH BENEFIT PAYMENTS
 - K PAYROLL STATEMENT OF COMPLIANCE
 - L LOCAL SMALL BUSINESS ENTERPRISE PREFERENCE PROGRAM
 - M SAFELY SURRENDERED BABY LAW

TECHNICAL EXHIBITS

- 1 CONTRACT DISCREPANCY REPORT
- 2 PERFORMANCE REQUIREMENT SUMMARY CHART

CONTRACT BETWEEN
COUNTY OF LOS ANGELES
AND
MAXIM BUILDING CARE, INC.
FOR
CUSTODIAL SERVICES AREA 3

This Contract and Exhibits made and entered into this ____ day of _____, 2004 by and between the County of Los Angeles, hereinafter referred to as County and Maxim Building Care, Inc., hereinafter referred to as Contractor. Maxim Building Care, Inc. is located at 3540 Wilshire Blvd., Suite 711, Los Angeles, CA 90010.

RECITALS

WHEREAS, the County may contract with private businesses for Custodial Services when certain requirements are met; and

WHEREAS, the Contractor is a private firm specializing in providing Custodial Services; and

WHEREAS, the County has determined that it is legal, feasible, and cost-effective to contract Custodial Services; and

WHEREAS, this Contract is therefore authorized under Section 44.7 of the Los Angeles County Charter and Los Angeles County Codes Section 2.121.250; and

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for good and valuable consideration, the parties agree to the following:

1.0 APPLICABLE DOCUMENTS

Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, and Technical Exhibits 1 and 2 are attached to and form a part of this Contract. In the event of any conflict or inconsistency in the definition or interpretation of any word, responsibility, schedule, or the contents or description of any task, deliverable, goods, service, or other work, or otherwise between the base Contract and the Exhibits, or between Exhibits, such conflict or inconsistency shall be resolved by giving precedence first to the Contract and then to the Exhibits according to the following priority:

EXHIBIT A - Statement of Work

EXHIBIT B - Pricing Schedule

EXHIBIT C - Contractor's Proposed Schedule

EXHIBIT D - Contractor's EEO Certification

EXHIBIT E - County's Administration

EXHIBIT F - Contractor's Administration

EXHIBIT G - Forms Required at the Time of Contract Execution

EXHIBIT H - Jury Service Ordinance

EXHIBIT I - Living Wage Ordinance

EXHIBIT J - Monthly Certification for Applicable Health Benefit
Payments

EXHIBIT K - Payroll Statement of Compliance

EXHIBIT L - Local Small Business Enterprise Preference
Program

EXHIBIT M - Safely Surrendered Baby Law

TECHNICAL EXHIBITS

EXHIBIT 1 - CONTRACT DISCREPANCY REPORT

EXHIBIT 2 - PERFORMANCE REQUIREMENT SUMMARY CHART

2.0 DEFINITIONS

The headings herein contained are for convenience and reference only and are not intended to define the scope of any provision thereof. The following words as used herein shall be construed to have the following meaning, unless otherwise apparent from the context in which they are used.

- 2.1 Call Back:** Emergency services that shall be addressed by the Contractor within a 2 hour time frame of notification.
- 2.2 Contract:** Agreement executed between County and Contractor. It sets forth the terms and conditions for the issuance and performance of the Statement of Work, Exhibit A.
- 2.3 Contractor:** The sole proprietor, partnership, or corporation that has entered into a contract with the County to perform or execute the work covered by the Statement of Work.
- 2.4 Contractor Project Manager:** The individual designated by the Contractor to administer the Contract operations after the Contract award.
- 2.5 County:** County of Los Angeles
- 2.6 County Contract Project Monitor:** Person with responsibility to oversee the day-to-day activities of this Contract. They are responsible for inspections of any and all tasks, deliverables, goods, services and other work provided by Contractor.
- 2.7 County Librarian:** Director of County of Los Angeles Public Library.
- 2.8 County Project Director:** Person designated by County with authority for County on contractual or administrative matters relating to this Contract that cannot be resolved by the County's Project Manager.
- 2.9 County Project Manager:** Person designated by County's Project Director to manage the operations under this Contract.
- 2.10 Day(s):** Business unless otherwise specified.
- 2.11 Fiscal Year:** The twelve (12) month period beginning July 1st and ending the following June 30th.

2.12 Library: County of Los Angeles Public Library

3.0 WORK

- 3.1 Pursuant to the provisions of this Contract, the Contractor shall fully perform, complete and deliver on time, all tasks, deliverables, services and other work as set forth herein the *Statement of Work, Exhibit A*.
- 3.2 If the Contractor provides any tasks, deliverables, goods, services, or other work, other than as specified in this Contract, the same shall be deemed to be a gratuitous effort on the part of the Contractor, and the Contractor shall have no claim whatsoever against the County.

4.0 TERM OF CONTRACT

- 4.1 The term of this Contract shall be for a period of three (3) years commencing after execution by County's Board of Supervisors, in whole or in part, as provided in this Contract.
- 4.2 The County shall have the option to extend the Contract term for up to two (2) one-year options. Each option year and/or month-to-month extension not to exceed six (6) months may be exercised at the discretion of the County Librarian who has the delegated authority to extend the term on a month-to-month extension not to exceed a total of six (6) months at end of term or option years. Current rates, terms, and conditions shall remain in effect.
- 4.3 Contractor shall notify Library when this Contract is within six (6) months from the expiration of the term as provided for hereinabove. Upon occurrence of this event, Contractor shall send written notification to Library at the address herein provided in, *Exhibit E - County's Administration*.

5.0 CONTRACT SUM

- 5.1 The maximum contract sum under the terms of this Contract shall be the total monetary amount payable by County to Contractor for provision of the Services specified herein in accordance with Exhibit B, "Proposal Sheet," and shall not exceed One Hundred Sixty-Three Thousand, Two Hundred Sixty-Nine dollars and Eighty-Four cents

(\$163,269.84) for each year of this Contract, except as set forth in Section 8.4 "Change Notices and Amendments."

5.2 Contractor will be paid the monthly contract fee of Thirteen Thousand, Six Hundred Five dollars and Eighty-Two cents (\$13,605.82) approximately forty-five (45) business days in arrears, after submission of invoices. Approval of invoices submitted will be subject to auditing requirements of the County.

5.3 The Contractor shall not be entitled to payment or reimbursement for any tasks or services performed, nor for any incidental or administrative expenses whatsoever incurred in or incidental to performance hereunder, except as specified herein. Assumption or takeover of any of the Contractor's duties, responsibilities, or obligations, or performance of same by any entity other than the Contractor, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever, shall occur only with the County's express prior written approval.

5.4 The Contractor shall maintain a system of record keeping that will allow Contractor to determine when it has incurred seventy-five percent (75%) of the total contract authorization under this Contract. Upon occurrence of this event, Contractor shall send written notification to Library at the address herein provided in *Exhibit E*.

5.5 No Payment for Services Provided Following Expiration/Termination of Contract

Contractor shall have no claim against County for payment of any money or reimbursement, of any kind whatsoever, for any service provided by Contractor after the expiration or other termination of this Contract. Should Contractor receive any such payment it shall immediately notify County and shall immediately repay all such funds to County. Payment by County for services rendered after expiration/termination of this Contract shall not constitute a waiver of

County's right to recover such payment from Contractor. This provision shall survive the expiration or other termination of this Contract.

5.6 Invoices and Payments

5.6.1 The Contractor shall invoice the County only for providing the tasks, deliverables, goods, services, and other work specified herein provided in *Exhibit A, Statement of Work* and elsewhere hereunder. The Contractor shall prepare invoices, which shall include the charges owed to the Contractor by the County under the terms of this Contract. The Contractor's payments shall be as herein provided in *Exhibit B, Pricing Schedule* and the Contractor shall be paid only for the tasks, deliverables, goods, services, and other work approved in writing by the County.

5.6.2 The Contractor's invoices shall be priced in accordance with herein provided in *Exhibit B, Pricing Schedule*.

5.6.3 The Contractor's invoices shall contain the information set forth herein provided in *Exhibit A, Statement of Work*, describing the tasks, deliverables, goods, services, work hours, and facility and/or other work for which payment is claimed.

5.6.4 The Contractor shall submit the monthly invoices to the County by the 15th calendar day of the month following the month of service.

*No invoice will be approved for payment unless the following **original** documents have been received: (facsimiles are not acceptable)*

- *Exhibit J - Monthly Certification for Applicable Health Benefit Payments*
- *Exhibit K - Payroll Statement of Compliance*

5.6.5 All invoices under this Contract shall be submitted in two (2) copies to the following address:

County of Los Angeles Public Library
Contracting Services
7400 East Imperial Hwy, Room 206
Downey, California 90242

5.6.6 County Approval of Invoices.

All invoices submitted by the Contractor for payment must have the written approval of the County's Project Manager prior to any payment thereof. In no event shall the County be liable or responsible for any payment prior to such written approval.

6.0 ADMINISTRATION OF CONTRACT - COUNTY

COUNTY ADMINISTRATION

A listing of all County Administration referenced in the following Sub-paragraphs are designated herein provided in *Exhibit E, County's Administration*. The County shall notify the Contractor in writing of any change in the names or addresses shown.

6.1 County's Project Director

Responsibilities of the County's Project Director include:

- ensuring that the objectives of this Contract are met;
- making changes in the terms and conditions of this Contract in accordance with *Sub-paragraph 8.4, Change Notices and Amendments*; and
- providing direction to Contractor in the areas relating to County policy, information requirements, and procedural requirements.

6.2 County's Project Manager

The responsibilities of the County's Project Manager include:

- meeting with Contractor's Project Manager on a regular basis;
- ensuring that work areas and/or location(s) in the Library used by the Contractor will be accessible and subject to inspection at anytime.

The County's Project Manager is not authorized to make any changes in any of the terms and conditions of this Contract and is not authorized to further obligate County in any respect whatsoever.

6.3 County's Contract Project Monitor

The County's Contract Project Monitor is responsible for overseeing the day-to-day administration of this Contract. The County Contract Project Monitor reports to the County's Project Manager.

7.0 ADMINISTRATION OF CONTRACT - CONTRACTOR

7.1 Contractor's Project Manager

7.1.1 Contractor shall provide a full-time Project Manager or designated alternate as designated herein *Exhibit F, Contractor's Administration*. The Contractor shall notify the County in writing of any change in the name or address of the Contractor's Project Manager. The Contractor's Project Manager shall act as a central point of contact with the County. Contractor's Project Manager shall demonstrate previous experience in the management of work requirements for facilities similar in size and complexity as this Contract.

7.1.2 Contractor's Project Manager/alternate shall be able to effectively communicate in the English language both orally and in writing.

7.1.3 Contractor's Project Manager shall be responsible for Contractor's day-to-day activities as related to this Contract and shall coordinate with County's Project Manager and Project Monitor on a regular basis.

7.2 Contractor's Staff

7.2.1 County has the absolute right to approve or disapprove all of Contractor's staff performing work hereunder and any proposed changes in Contractor's staff without cause, including, but not limited to, Contractor's Project Manager immediately upon County's request.

7.2.2 Contractor shall assign a sufficient number of qualified employees to perform the required work. At least one employee on site shall be authorized to act for the contractor in every detail and must speak and understand the English language.

7.2.3 County may require the Contractor, at their expense, to conduct background security checks on their employees.

7.3 Contractor's Staff Identification

7.3.1 Contractor shall provide all staff assigned to this Contract with a photo identification badge in accordance with County specifications. Specifications may change at the discretion of the County and Contractor will be provided new specifications as required. The format and content of the badge is subject to the County's approval prior to the Contractor implementing the use of the badge. Contractor staff, while on duty or when entering a County facility or its grounds, shall prominently display the photo identification badge on the upper part of the body.

7.3.2 Contractor shall notify the County within one business day when staff is terminated from working on this Contract. Contractor is responsible to retrieve and immediately destroy the staff's County photo identification badge at the time of removal from the County Contract.

7.3.3 If County requests the removal of Contractor's staff, Contractor is responsible to retrieve and immediately destroy the Contractor's staff's County photo identification badge at the time of removal from working on the Contract.

7.4 Employee Criminal Record

No personnel employed by Contractor and providing the services herein shall have a criminal conviction record or pending criminal trial for bribery, fraud, receiving stolen property, robbery, embezzlement,

theft or forgery, unless such record has been disclosed and employment of the employee for this service has been approved in writing by the Library Department.

7.5 Background and Security Investigations

7.5.1 At any time prior to or during term of this Contract, the County may require that all Contractor staff performing work under this Contract undergo and pass, to the satisfaction of County, a background investigation, as a condition of beginning and continuing to work under this Contract. County shall use its discretion in determining the method of background clearance to be used, up to and including a County performed fingerprint security clearance. The fees associated with obtaining the background information shall be at the expense of the Contractor, regardless if the Contractor's staff passes or fails the background clearance investigation.

7.5.2 County may request that Contractor's staff be immediately removed from working on the County Contract at any time during the term of the Contract. County will not provide to Contractor or to Contractor's staff any information obtained through the County conducted background clearance.

7.5.3 County may immediately deny or terminate facility access to Contractor's staff who do not pass such investigation(s) to the satisfaction of the County whose background or conduct is incompatible with County facility access, at the sole discretion of the County.

7.5.4 Disqualification, if any, of Contractor staff, pursuant to this Sub-paragraph 7.5, shall not relieve Contractor of its obligation to complete all work in accordance with the terms and conditions of this Contract.

7.6 Employment Eligibility Verification

- 7.6.1 Contractor warrants that it fully complies with all statutes and regulations regarding the employment eligibility of aliens and others, and that all persons performing services under this contract are eligible for employment in the United States.
- 7.6.2 Contractor represents that it has secured and retained all required documentation verifying employment eligibility of its subject personnel. Contractor shall secure and retain verification of employment eligibility from any new personnel in accordance with the applicable provisions of law.
- 7.6.3 Contractor shall indemnify, defend and hold harmless the County, its officers and employees from any employer sanctions and other liability that may be assessed against County or Contractor in connection with any violations of Federal statutes or regulations pertaining to the employment of aliens performing services hereunder.

7.7 Confidentiality

The Contractor shall maintain the confidentiality of all records obtained from the County under this Contract in accordance with all applicable federal, State or local laws, ordinances, regulations and directives relating to confidentiality.

The Contractor shall inform all of its officers, employees, agents and subcontractors providing services hereunder of the confidentiality provisions of this Contract. The Contractor shall cause each employee performing services covered by this Contract to sign and adhere to the *“Contractor Employee Acknowledgment, Confidentiality, and Copyright Assignment Agreement”*, Exhibit G1.

The Contractor shall cause each non-employee performing services covered by this Contract to sign and adhere to the *“Contractor Non-Employee Acknowledgment, Confidentiality, and Copyright Assignment Agreement”*, Exhibit G2.

8.0 TERMS AND CONDITIONS

8.1 ASSIGNMENT AND DELEGATION

8.1.1 The Contractor shall not assign its rights or delegate its duties under this Contract, or both, either in whole or in part, without the prior written consent of the County Librarian. Any unapproved assignment or delegation shall be null and void. Any payments by the Library to any approved delegate or assignee on any claim under this Contract shall be deductible, at Library's sole discretion, against the claims, which the Contractor may have against the County.

8.1.2 If any assumption, assignment, delegation, or takeover of any of the Contractor's duties, responsibilities, obligations, or performance of same by any entity other than the Contractor, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever without Library's express prior written approval, may result in the termination of this Contract.

8.2 AUTHORIZATION WARRANTY

The Contractor represents and warrants that the person executing this Contract for the Contractor is an authorized agent who has actual authority to bind the Contractor to each and every term, condition, and obligation of this Contract and that all requirements of the Contractor have been fulfilled to provide such actual authority.

8.3 BUDGET REDUCTIONS

In the event that the County's Board of Supervisors adopts, in any fiscal year, a County Budget which provides for reductions in the salaries and benefits paid to the majority of County employees and imposes similar reductions with respect to County Contracts, the County reserves the right to reduce its payment obligation correspondingly for that fiscal year and any subsequent fiscal year for services provided by the Contractor under the Contract. The

County's notice to the Contractor regarding said reduction in payment obligation shall be provided within thirty (30) business days of the Board's approval of such actions. The Contractor shall continue to provide all of the services set forth in the Contract.

8.4 CHANGE NOTICES AND AMENDMENTS

8.4.1 The County reserves the right to initiate Change Notices that **do not affect** the scope, term, Contract Sum or payments.

All such changes shall be accomplished with an executed Change Notice signed by the Contractor and by County Librarian.

8.4.2 For any change which affects the scope of work, term, Contract Sum, payments, or any term or condition included under this Contract, an Amendment shall be prepared and executed by the Board of Supervisors, for the exception of which County Librarian is expressly authorized to increase the contract sum set forth in *5.0 Contract Sum*, not to exceed twenty percent (20%) of the total contract sum for a particular contract year based on an increase in unanticipated work. Any such changes shall be in writing and signed by the County Librarian and Contractor.

8.4.3 The County's Board of Supervisors or Chief Administrative Officer or designee may require the addition and/or change of certain terms and conditions in the Contract during the term of this Contract. The County reserves the right to add and/or change such provisions as required by the County's Board of Supervisors or Chief Administrative Officer. To implement such changes, an Amendment to the Contract shall be prepared and executed by the Contractor and by County Librarian.

8.4.4 The County Librarian, may, at his/her sole discretion, authorize extensions of term as defined in *Paragraph 4.0 - Term of Contract*. The Contractor agrees that such extensions of time

shall not change any other term or condition of this Contract during the period of such extensions. To implement an extension of term, an Amendment to the Contract shall be prepared and executed by the Contractor and by the County Librarian.

8.4.5 For any change which affects any other term or condition included in this Contract, a negotiated modification shall be prepared therefore, executed by Contractor, and thereafter by County's Board of Supervisors.

8.5 COMPLAINTS

The Contractor shall develop, maintain and operate procedures for receiving, investigating and responding to complaints.

Within five (5) business days after Contract effective date, the Contractor shall provide the County with the Contractor's policy for receiving, investigating and responding to Library complaints.

8.5.1 The County will review the Contractor's policy and provide the Contractor with approval of said plan or with requested changes.

8.5.2 The County will review the Contractor's policy and provide the Contractor with approval of said plan or with requested changes.

8.5.3 If the County requests changes in the Contractor's policy, the Contractor shall make such changes and resubmit the plan within five (5) business days.

8.5.4 If, at any time, the Contractor wishes to change the Contractor's policy, the Contractor shall submit proposed changes to the County for approval before implementation.

The Contractor shall preliminarily investigate all complaints and notify the County's Project Manager of the status of the investigation within five (5) business days of receiving the complaint.

When complaints cannot be resolved informally, a system of follow-through shall be instituted which adheres to formal plans for specific actions and strict time deadlines.

Copies of all written responses shall be sent to the County's Project Manager within three (3) business days of mailing to the complainant.

8.6 COMPLIANCE WITH APPLICABLE LAW

8.6.1 The Contractor shall comply with all applicable Federal, State, and local laws, rules, regulations, ordinances, and directives, and all provisions required thereby to be included in this Contract are hereby incorporated herein by reference.

8.6.2 The Contractor shall indemnify and hold harmless the County from and against any and all liability, damages, costs, and expenses, including, but not limited to, defense costs and attorneys' fees, arising from or related to any violation on the part of the Contractor or its employees, agents, or subcontractors of any such laws, rules, regulations, ordinances, or directives.

8.7 COMPLIANCE WITH CIVIL RIGHTS LAWS

The Contractor hereby assures that it will comply with Subchapter VI of the Civil Rights Act of 1964, 42 USC Sections 2000 (e) (1) through 2000 (e) (17), to the end that no person shall, on the grounds of race, creed, color, sex, religion, ancestry, age, condition of physical handicap, marital status, political affiliation, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Contract or under any project, program, or activity supported by this Contract. The Contractor shall comply with *Exhibit D - Contractor's EEO Certification*.

8.8 COMPLIANCE WITH DISPLACED JANITOR OPPORTUNITY ACT

This contract is subject to the provisions of the Displaced Janitor Opportunity Act (California Labor Code Sections 1060-1065) because it is a contract for janitorial or building maintenance services performed within the State of California entered into on or after January 1, 2002.

Under this Act, as specified in detail in the provisions therein, a successor contractor or successor subcontractor shall retain, for a 60-day transition employment period, employees who have been employed by the terminated contractor or its subcontractors, if any, for the preceding four months or longer at the site or sites covered by the successor service contract unless the successor contractor or successor subcontractor has reasonable and substantiated cause not to hire a particular employee based on that employee's performance or conduct while working under the terminated contract.

8.9 COMPLIANCE WITH THE COUNTY'S JURY SERVICE PROGRAM

8.9.1 Jury Service Program:

This Contract is subject to the provisions of the County's ordinance entitled Contractor Employee Jury Service ("Jury Service Program") as codified in Sections 2.203.010 through 2.203.090 of the Los Angeles County Code.

8.9.2 Written Employee Jury Service Policy.

1. Unless Contractor has demonstrated to the County's satisfaction either that Contractor is not a "Contractor" as defined under the Jury Service Program Section 2.203.020 of the County Code or that Contractor qualifies for an exception to the Jury Service Program Section 2.203.070 of the County Code, Contractor shall have and adhere to a written policy that provides that its Employees shall receive from the Contractor, on an annual basis, no less than five days of regular pay for actual jury service. The policy may

provide that Employees deposit any fees received for such jury service with the Contractor or that the Contractor deduct from the Employee's regular pay the fees received for jury service.

2. For purposes of this Sub-paragraph, "Contractor" means a person, partnership, corporation or other entity which has a contract with the County or a subcontract with a County Contractor and has received or will receive an aggregate sum of \$50,000 or more in any 12-month period under one or more County contracts or subcontracts. "Employee" means any California resident who is a full time employee of Contractor. "Full-time" means 40 hours or more worked per week, or a lesser number of hours if: 1) the lesser number is a recognized industry standard as determined by the County, or 2) Contractor has a long-standing practice that defines the lesser number of hours as full-time. Full-time employees providing short-term, temporary services of 90 days or less within a 12-month period are not considered full-time for purposes of the Jury Service Program. If Contractor uses any subcontractor to perform services for the County under the Contract, the subcontractor shall also be subject to the provisions of this Sub-paragraph. The provisions of this Sub-paragraph shall be inserted into any such subcontract agreement and a copy of the Jury Service Program shall be attached to the agreement.
3. If Contractor is not required to comply with the Jury Service Program when the Contract commences, Contractor shall have a continuing obligation to review the applicability of its "exception status" from the Jury Service Program, and Contractor shall immediately notify County if Contractor at

any time either comes within the Jury Service Program's definition of "Contractor" or if Contractor no longer qualifies for an exception to the Jury Service Program. In either event, Contractor shall immediately implement a written policy consistent with the Jury Service Program. The County may also require, at any time during the Contract and at its sole discretion, that Contractor demonstrate to the County's satisfaction that Contractor either continues to remain outside of the Jury Service Program's definition of "Contractor" and/or that Contractor continues to qualify for an exception to the Program.

4. Contractor's violation of this Sub-paragraph of the Contract may constitute a material breach of the Contract. In the event of such material breach, County may, in its sole discretion, terminate the Contract and/or bar Contractor from the award of future County contracts for a period of time consistent with the seriousness of the breach.

8.10 COMPLIANCE WITH THE COUNTY'S LIVING WAGE PROGRAM

8.10.1 Living Wage Program:

This Contract is subject to the provisions of the County's ordinance entitled Living Wage Program as codified in Sections 2.201.010 through 2.201.100 of the Los Angeles County Code, a copy of which is attached as *Appendices E-L, Appendix G* of and incorporated by reference into and made a part of this Contract.

8.10.2 Payment of Living Wage Rates.

1. Unless the Contractor has demonstrated to the County's satisfaction either that the Contractor is not an "Employer" as defined under the Program Section 2.201.020 of the County Code or that the Contractor qualifies for an exception to the Living Wage Program Section 2.201.090

of the County Code, the Contractor shall pay its Employees no less than the applicable hourly living wage rate, as set forth immediately below, for the Employees' services provided to the County under the Contract:

- a. Not less than \$9.46 per hour if, in addition to the per-hour wage, the Contractor contributes less than \$1.14 per hour towards the provision of bona fide health care benefits for its Employees and any dependents; or
 - b. Not less than \$8.32 per hour if, in addition to the per-hour wage, the Contractor contributes at least \$1.14 per hour towards the provision of bona fide health care benefits for its Employees and any dependents. The Contractor will be deemed to have contributed \$1.14 per hour towards the provision of bona fide health care benefits if the benefits are provided through the County Department of Health Services Community Health Plan. If, at any time during the Contract, the Contractor contributes less than \$1.14 per hour towards the provision of bona fide health care benefits, the Contractor shall be required to pay its Employees the higher hourly living wage rate.
2. For purposes of this Sub-paragraph, "Contractor" includes any subcontractor engaged by the Contractor to perform services for the County under the Contract. If the Contractor uses any subcontractor to perform services for the County under the Contract, the subcontractor shall be subject to the provisions of this Sub-paragraph. The provisions of this Sub-paragraph shall be inserted into any such subcontract Contract and a copy of the Living Wage Program shall be attached to the Contract. "Employee" means any individual who is an employee of the Contractor

under the laws of California, and who is providing full-time services to the Contractor, some or all of which are provided to the County under the Contract. "Full-time" means a minimum of 40 hours worked per week, or a lesser number of hours, if the lesser number is a recognized industry standard and is approved as such by the County; however, fewer than 35 hours worked per week will not, in any event, be considered full-time.

3. If the Contractor is required to pay a living wage when the Contract commences, the Contractor shall continue to pay a living wage for the entire term of the Contract, including any option period.
4. If the Contractor is not required to pay a living wage when the Contract commences, the Contractor shall have a continuing obligation to review the applicability of its "exemption status" from the living wage requirement. The Contractor shall immediately notify the County if the Contractor at any time either comes within the Living Wage Program's definition of "Employer" or if the Contractor no longer qualifies for an exception to the Living Wage Program. In either event, the Contractor shall immediately be required to commence paying the living wage and shall be obligated to pay the living wage for the remaining term of the Contract, including any option period. The County may also require, at any time during the Contract and at its sole discretion, that the Contractor demonstrate to the County's satisfaction that the Contractor either continues to remain outside of the Living Wage Program's definition of "Employer" and/or that the Contractor continues to qualify for an exception to the Living Wage Program. Unless the Contractor satisfies this requirement within the time frame

permitted by the County, the Contractor shall immediately be required to pay the living wage for the remaining term of the Contract, including any option period.

8.10.3 Contractor's Submittal of Certified Monitoring Reports.

The Contractor shall submit to the County certified monitoring reports at a frequency instructed by the County. The certified monitoring reports shall list all of the Contractor's Employees during the reporting period. The certified monitoring reports shall also verify the number of hours worked, the hourly wage rate paid, and the amount paid by the Contractor for health benefits, if any, for each of its Employees. The certified monitoring reports shall also state the name and identification number of the Contractor's current health care benefits plan, and the Contractor's portion of the premiums paid as well as the portion paid by each Employee. All certified monitoring reports shall be submitted on forms provided by the County (*Exhibit J and Exhibit K*), or other form approved by the County which contains the above information. The County reserves the right to request any additional information it may deem necessary. If the County requests additional information, the Contractor shall promptly provide such information. The Contractor, through one of its officers, shall certify under penalty of perjury that the information contained in each certified monitoring report is true and accurate.

8.10.4 Contractor's Ongoing Obligation to Report Labor Law/Payroll Violations and Claims

During the term of the Contract, if the Contractor becomes aware of any labor law/payroll violation or any complaint, investigation or proceeding ("claim") concerning any alleged labor law/payroll violation (including but not limited to any violation or claim pertaining to wages, hours and working

conditions such as minimum wage, prevailing wage, living wage, the Fair Labor Standards Act, employment of minors, or unlawful employment discrimination), the Contractor shall immediately inform the County of any pertinent facts known by the Contractor regarding same. This disclosure obligation is not limited to any labor law/payroll violation or claim arising out of the Contractor's contract with the County, but instead applies to any labor law/payroll violation or claim arising out of any of the Contractor's operations in California.

8.10.5 County Auditing of Contractor Records.

Upon a minimum of twenty-four (24) hours' written notice, the County may audit, at the Contractor's place of business, any of the Contractor's records pertaining to the Contract, including all documents and information relating to the certified monitoring reports. The Contractor is required to maintain all such records in California until the expiration of four years from the date of final payment under the Contract. Authorized agents of the County shall have access to all such records during normal business hours for the entire period that records are to be maintained.

8.10.6 Notifications to Employees.

The Contractor shall place County-provided living wage posters at each of the Contractor's places of business and locations where Contractor's Employees are working. The Contractor shall also distribute County-provided notices to each of its Employees at least once per year. The Contractor shall translate into Spanish and any other language spoken by a significant number of Employees the posters and handouts.

8.10.7 Enforcement and Remedies.

If the Contractor fails to comply with the requirements of this Sub-paragraph, the County shall have the rights and remedies described in this Sub-paragraph in addition to any rights and remedies provided by law or equity.

1. Remedies for Submission of Late or Incomplete Certified Monitoring Reports. If the Contractor submits a certified monitoring report to the County after the date it is due or if the report submitted does not contain all of the required information or is inaccurate or is not properly certified, any such deficiency shall constitute a breach of the Contract. In the event of any such breach, the County may, in its sole discretion, exercise any or all of the following rights/remedies:

- a. Withholding of Payment. If the Contractor fails to submit accurate, complete, timely and properly certified monitoring reports, the County may withhold from payment to the Contractor up to the full amount of any invoice that would otherwise be due, until Contractor has satisfied the concerns of the County, which may include required submittal of revised certified monitoring reports or additional supporting documentation.
- b. Liquidated Damages. It is mutually understood and agreed that the Contractor's failure to submit an accurate, complete, timely and properly certified monitoring report will result in damages being sustained by the County. It is also understood and agreed that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein are the nearest and most exact measure of damages for such breach that

can be fixed at this time; and that the liquidated damages are not intended as a penalty or forfeiture for the Contractor's breach. Therefore, in the event that a certified monitoring report is deficient, including but not limited to being late, inaccurate, incomplete or uncertified, it is agreed that the County may, in its sole discretion, assess against the Contractor liquidated damages in the amount of \$100 per monitoring report for each day until the County has been provided with a properly prepared, complete and certified monitoring report. The County may deduct any assessed liquidated damages from any payments otherwise due the Contractor.

- c. Termination. The Contractor's continued failure to submit accurate, complete, timely and properly certified monitoring reports may constitute a material breach of the Contract. In the event of such material breach, the County may, in its sole discretion, terminate the Contract.

- 2. Remedies for Payment of Less than the Required Living Wage. If the Contractor fails to pay any Employee at least the applicable hourly living wage rate, such deficiency shall constitute a breach of the Contract. In the event of any such breach, the County may, in its sole discretion, exercise any or all of the following rights/remedies:

- a. Withholding Payment. If the Contractor fails to pay one or more of its Employees at least the applicable hourly living wage rate, the County may withhold from any payment otherwise due the Contractor the aggregate difference between the living wage amounts the Contractor was required to pay its Employees for a

given pay period and the amount actually paid to the employees for that pay period. The County may withhold said amount until the Contractor has satisfied the County that any underpayment has been cured, which may include required submittal of revised certified monitoring reports or additional supporting documentation.

- b. Liquidated Damages. It is mutually understood and agreed that the Contractor's failure to pay any of its Employees at least the applicable hourly living wage rate will result in damages being sustained by the County. It is also understood and agreed that the nature and amount of the damages will be extremely difficult and impractical to fix; that the liquidated damages set forth herein are the nearest and most exact measure of damages for such breach that can be fixed at this time; and that the liquidated damages are not intended as a penalty or forfeiture for the Contractor's breach. Therefore, it is agreed that the County may, in its sole discretion, assess against the Contractor liquidated damages of \$50 per Employee per day for each and every instance of an underpayment to an Employee. The County may deduct any assessed liquidated damages from any payments otherwise due the Contractor.
- c. Termination. The Contractor's continued failure to pay any of its Employees the applicable hourly living wage rate may constitute a material breach of the Contract. In the event of such material breach, the County may, in its sole discretion, terminate the Contract.

3. Debarment. In the event the Contractor breaches a requirement of this Sub-paragraph, the County may, in its sole discretion, bar the Contractor from the award of future County contracts for a period of time consistent with the seriousness of the breach, not to exceed three years.

8.10.8 Use of Full-Time Employees.

The Contractor shall assign and use full-time Employees of the Contractor to provide services under the Contract unless the Contractor can demonstrate to the satisfaction of the County that it is necessary to use non-full-time Employees based on staffing efficiency or County requirements for the work to be performed under the Contract. It is understood and agreed that the Contractor shall not, under any circumstance, use non-full-time Employees for services provided under the Contract unless and until the County has provided written authorization for the use of same. The Contractor submitted with its proposal a full-time Employee staffing plan. If the Contractor changes its full-time Employee staffing plan, the Contractor shall immediately provide a copy of the new staffing plan to the County.

8.10.9 Contractor Retaliation Prohibited.

The Contractor and/or its Employees shall not take any adverse action which would result in the loss of any benefit of employment, any contract benefit, or any statutory benefit for any Employee, person or entity who has reported a violation of the Living Wage Program to the County or to any other public or private agency, entity or person. A violation of the provisions of this Sub-paragraph may constitute a material breach of the Contract. In the event of such material breach, the County may, in its sole discretion, terminate the Contract.

8.10.10 Contractor Standards.

During the term of the Contract, the Contractor shall maintain business stability, integrity in employee relations and the financial ability to pay a living wage to its employees. If requested to do so by the County, the Contractor shall demonstrate to the satisfaction of the County that the Contractor is complying with this requirement.

8.10.11 Employee Retention Rights

1. Contractor shall offer employment to all retention employees who are qualified for such jobs. A “retention employee” is an individual:
 - a. Who is not an exempt employee under the minimum wage and maximum hour exemptions defined in the federal Fair Labor Standards Act; and
 - b. Who has been employed by a Contractor under a predecessor Proposition A contract or a predecessor cafeteria services contract with the County for at least six months prior to the date of this new Contract, which predecessor contract was terminated by the County prior to its expiration; and
 - c. Who is or will be terminated from his or her employment as a result of the County entering into this new contract.
2. Contractor is not required to hire a retention employee who:
 - a. Has been convicted of a crime related to the job or his or her performance; or
 - b. Fails to meet any other County requirement for employees of a Contractor.
3. Contractor shall not terminate a retention employee for the first 90 days of employment under the contract, except for cause. Thereafter, Contractor may retain a retention

employee on the same terms and conditions as Contractor's other employees.

8.10.12 Neutrality in Labor Relations

The Contractor shall not use any consideration received under the Contract to hinder, or to further, organization of, or collective bargaining activities by or on behalf of the Contractor's employees, except that this restriction shall not apply to any expenditure made in the course of good faith collective bargaining, or to any expenditure pursuant to obligations incurred under a bona fide collective bargaining Contract, or which would otherwise be permitted under the provisions of the National Labor Relations Act.

8.11 CONFLICT OF INTEREST

8.11.1 No County employee whose position with the County enables such employee to influence the award of this Contract or any competing Contract, and no spouse or economic dependent of such employee, shall be employed in any capacity by the Contractor or have any other direct or indirect financial interest in this Contract. No officer or employee of the Contractor who may financially benefit from the performance of work hereunder shall in any way participate in the County's approval, or ongoing evaluation, of such work, or in any way attempt to unlawfully influence the County's approval or ongoing evaluation of such work.

8.11.2 The Contractor shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Contract. The Contractor warrants that it is not now aware of any facts that create a conflict of interest. If the Contractor hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it shall immediately make full

written disclosure of such facts to the County. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with the provisions of this Sub-paragraph shall be a material breach of this Contract.

8.12 CONSIDERATION OF HIRING COUNTY EMPLOYEES TARGETED FOR LAYOFF/RE-EMPLOYMENT LIST

Should the Contractor require additional or replacement personnel after the effective date of this Contract to perform the services set forth herein, the Contractor shall give **first consideration** for such employment openings to qualified, permanent County employees who are targeted for layoff or qualified, former County employees who are on a re-employment list during the life of this Contract.

8.13 CONSIDERATION OF HIRING GAIN/GROW PROGRAM PARTICIPANTS

Should the Contractor require additional or replacement personnel after the effective date of this Contract, the Contractor shall give consideration for any such employment openings to participants in the County's Department of Public Social Services Greater Avenues for Independence (GAIN) Program or General Relief Opportunity for Work (GROW) Program who meet the Contractor's minimum qualifications for the open position. For this purpose, consideration shall mean that the Contractor will interview qualified candidates. The County will refer GAIN/GROW participants by job category to the Contractor. In the event that both laid-off County employees and GAIN/GROW participants are available for hiring, County employees shall be given first priority.

8.14 CONTRACTOR'S RESPONSIBILITY AND DEBARMENT

8.14.1 Responsible Contractor

A responsible Contractor is a Contractor who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity and experience to satisfactorily perform the Contract. It is the County's policy to conduct business only with responsible Contractors.

8.14.2 Chapter 2.202 of the County Code

The Contractor is hereby notified that, in accordance with Chapter 2.202 of the County Code, if the County acquires information concerning the performance of the Contractor on this or other Contracts which indicates that the Contractor is not responsible, the County may, in addition to other remedies provided in the Contract, debar the Contractor from bidding on any County Contracts for a specified period of time not to exceed three (3) years, and terminate any or all existing Contracts the Contractor may have with the County.

8.14.3 Non-responsible Contractor

The County may debar a Contractor if the Board of Supervisors finds, in its discretion, that the Contractor has done any of the following: (1) violated any term of a Contract with the County, (2) committed any act or omission which negatively reflects on the Contractor's quality, fitness or capacity to perform a Contract with the County or any other public entity, or engaged in a pattern or practice which negatively reflects on same, (3) committed an act or offense which indicates a lack of business integrity or business honesty, or (4) made or submitted a false claim against the County or any other public entity.

8.14.4 Contractor Hearing Board

If there is evidence that the Contractor may be subject to debarment, the Department will notify the Contractor in writing of the evidence that is the basis for the proposed debarment and will advise the Contractor of the scheduled date for a debarment hearing before the Contractor Hearing Board.

The Contractor Hearing Board will conduct a hearing where evidence on the proposed debarment is presented. The Contractor and/or the Contractor's representative shall be given an opportunity to submit evidence at that hearing. After the hearing, the Contractor Hearing Board shall prepare a proposed decision, which shall contain a recommendation regarding whether the Contractor should be debarred, and, if so, the appropriate length of time of the debarment. If the Contractor fails to avail itself of the opportunity to submit evidence to the Contractor Hearing Board, the Contractor may be deemed to have waived all rights of appeal.

A record of the hearing, the proposed decision, and any other recommendation of the Contractor Hearing Board shall be presented to the Board of Supervisors. The Board of Supervisors shall have the right to modify, deny, or adopt the proposed decision and recommendation of the Contractor Hearing Board.

8.14.5 Subcontractors of Contractor

These terms shall also apply to Subcontractors of County Contractors.

8.15 CONTRACTOR'S ACKNOWLEDGEMENT OF COUNTY'S COMMITMENT TO CHILD SUPPORT ENFORCEMENT

The Contractor acknowledges that the County places a high priority on the enforcement of child support laws and the apprehension of child support evaders. The Contractor understands that it is the County's policy to encourage all County Contractors to voluntarily post the County's "L.A.'s Most Wanted: Delinquent Parents" poster in a prominent position at the Contractor's place of business. The County's Child Support Services Department will supply the Contractor with the poster to be used.

8.16 CONTRACTOR'S WARRANTY OF ADHERENCE TO COUNTY'S CHILD SUPPORT COMPLIANCE PROGRAM

8.16.1 The Contractor acknowledges that the County has established a goal of ensuring that all individuals who benefit financially from the County through Purchase Order or Contract are in compliance with their court-ordered child, family and spousal support obligations in order to mitigate the economic burden otherwise imposed upon the County and its taxpayers.

8.16.2 As required by the County's Child Support Compliance Program County Code Chapter 2.200 and without limiting the Contractor's duty under this Contract to comply with all applicable provisions of law, the Contractor warrants that it is now in compliance and shall during the term of this Contract maintain compliance with employment and wage reporting requirements as required by the Federal Social Security Act (42 USC Section 653a) and California Unemployment Insurance Code Section 1088.5, and shall implement all lawfully served Wage and Earnings Withholding Orders or Child Support Services Department Notices of Wage and Earnings Assignment for Child or Spousal Support, pursuant

to Code of Civil Procedure Section 706.031 and Family Code Section 5246(b).

8.17 COUNTY'S QUALITY ASSURANCE PLAN

The County or its agent will evaluate the Contractor's performance under this Contract on not less than an annual basis. Such evaluation will include assessing the Contractor's compliance with all Contract terms and conditions and performance standards. Contractor deficiencies which the County determines are severe or continuing and that may place performance of the Contract in jeopardy if not corrected will be reported to the Board of Supervisors. The report will include improvement/corrective action measures taken by the County and the Contractor. If improvement does not occur consistent with the corrective action measures, the County may terminate this Contract or impose other penalties as specified in this Contract.

8.18 DAMAGE TO COUNTY FACILITIES, BUILDINGS OR GROUNDS

8.18.1 Contractor shall repair, or cause to be repaired, at its own cost, any and all damage to County facilities, buildings, or grounds caused by Contractor or employees or agents of Contractor. Such repairs shall be made immediately after Contractor has become aware of such damage, but in no event later than thirty (30) days after the occurrence.

8.18.2 If Contractor fails to make timely repairs, County may make any necessary repairs. All costs incurred by County, as determined by County, for such repairs shall be repaid by Contractor by cash payment upon demand.

8.19 EMPLOYMENT ELIGIBILITY VERIFICATION

The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirements set forth in Federal and State statutes and regulations. The Contractor shall

obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal and State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, (P.L. 99-603), or as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by law.

The Contractor shall indemnify, defend, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.

8.20 FACSIMILE REPRESENTATIONS

The County and the Contractor hereby agree to regard facsimile representations of original signatures of authorized officers of each party, when appearing in appropriate places on the *Change Notices and Amendments* prepared pursuant to *Sub-paragraph 8.4*, and received via communications facilities, as legally sufficient evidence that such original signatures have been affixed to Change Notices and Amendments to this Contract, such that the parties need not follow up facsimile transmissions of such documents with subsequent (non-facsimile) transmission of "original" versions of such documents.

8.21 FAIR LABOR STANDARDS

The Contractor shall comply with all applicable provisions of the Federal Fair Labor Standards Act and shall indemnify, defend, and hold harmless the County and its agents, officers, and employees from any and all liability, including, but not limited to, wages, overtime pay, liquidated damages, penalties, court costs, and attorneys' fees arising under any wage and hour law, including, but not limited to, the Federal Fair Labor Standards Act, for work performed by the Contractor's

employees for which the County may be found jointly or solely liable.

8.22 GOVERNING LAW, JURISDICTION, AND VENUE

This Contract shall be governed by, and construed in accordance with, the laws of the State of California. The Contractor agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Contract and further agrees and consents that venue of any action brought hereunder shall be exclusively in the County of Los Angeles.

8.23 INDEPENDENT CONTRACTOR STATUS

8.23.1 This Contract is by and between the County and the Contractor and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between the County and the Contractor. The employees and agents of one party shall not be, or be construed to be, the employees or agents of the other party for any purpose whatsoever.

8.23.2 The Contractor shall be solely liable and responsible for providing to, or on behalf of, all persons performing work pursuant to this Contract all compensation and benefits. The County shall have no liability or responsibility for the payment of any salaries, wages, unemployment benefits, disability benefits, Federal, State, or local taxes, or other compensation, benefits, or taxes for any personnel provided by or on behalf of the Contractor.

8.23.3 The Contractor understands and agrees that all persons performing work pursuant to this Contract are, for purposes of Workers' Compensation liability, solely employees of the Contractor and not employees of the County. The Contractor shall be solely liable and responsible for furnishing any and all Workers' Compensation benefits to any person as a result of any injuries arising from or connected with any work

performed by or on behalf of the Contractor pursuant to this Contract.

8.23.4 As previously instructed in *Sub-paragraph 7.7 -*

Confidentiality, the Contractor shall cause each employee performing services covered by this Contract to sign and adhere to the “*Contractor Employee Acknowledgment, Confidentiality, and Copyright Assignment Agreement*”, *Exhibit G1*. The Contractor shall cause each non-employee performing services covered by this Contract to sign and adhere to the “*Contractor Non-Employee Acknowledgment, Confidentiality, and Copyright Assignment Agreement*”, *Exhibit G2*.

8.24 INDEMNIFICATION

The Contractor shall indemnify, defend and hold harmless the County, its Special Districts, elected and appointed officers, employees, and agents from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, and expenses (including attorney and expert witness fees), arising from or connected with the Contractor's acts and/or omissions arising from and/or relating to this Contract. The Contractor's obligations shall survive the expiration or termination of this contract.

8.25 GENERAL INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the County and during the term of this Contract, the Contractor shall provide and maintain, and shall require all of its subcontractors to maintain, the following programs of insurance specified in this Contract. Such insurance shall be primary to and not contributing with any other insurance or self-insurance programs maintained by the County. Such coverage shall be provided and maintained at the Contractor's own expense.

8.25.1 Evidence of Insurance: Certificate(s) or other evidence of coverage satisfactory to the County shall be delivered to:

County of Los Angeles
Contract Services Coordinator
7400 East Imperial Hwy, Room 206
Downey, California 90242

prior to commencing services under this Contract. Such certificates or other evidence shall:

- Specifically identify this Contract;
- Clearly evidence all coverage required in this Contract;
- Contain the express condition that the County is to be given written notice by mail at least thirty (30) days in advance of cancellation for all policies evidenced on the certificate of insurance;
- Include copies of the additional insured endorsement to the commercial general liability policy, adding the County of Los Angeles, its Special Districts, its officials, officers and employees as insured for all activities arising from this Contract; and
- Identify any deductibles or self-insured retentions for the County's approval. The County retains the right to require the Contractor to reduce or eliminate such deductibles or self-insured retentions as they apply to the County, or, require the Contractor to provide a bond guaranteeing payment of all such retained losses and related costs, including, but not limited to, expenses or fees, or both, related to investigations, claims administrations, and legal defense. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.

8.25.2 Insurer Financial Ratings: Insurance is to be provided by an insurance company acceptable to the County with an A.M. Best rating of not less than A:VII unless otherwise approved by the County.

8.25.3 Failure to Maintain Coverage: Failure by the Contractor to maintain the required insurance, or to provide evidence of insurance coverage acceptable to the County, shall constitute a material breach of the Contract upon which the County may immediately terminate or suspend this Contract. The County, at its sole option, may obtain damages from the Contractor resulting from said breach. Alternatively, the County may purchase such required insurance coverage, and without further notice to the Contractor, the County may deduct from sums due to the Contractor any premium costs advanced by the County for such insurance.

8.25.4 Notification of Incidents, Claims or Suits: Contractor shall report to the County:

- Any accident or incident relating to services performed under this Contract which involves injury or property damage which may result in the filing of a claim or lawsuit against the Contractor and/or the County. Such report shall be made in writing within 24 hours of occurrence.
- Any third party claim or lawsuit filed against the Contractor arising from or related to services performed by the Contractor under this Contract.
- Any injury to a Contractor employee that occurs on County property. This report shall be submitted on a County "Non-employee Injury Report" to the County Contract Manager.
- Any loss, disappearance, destruction, misuse, or theft of any kind whatsoever of County property, monies or

securities entrusted to the Contractor under the terms of this Contract.

8.25.5 Compensation for County Costs: In the event that the Contractor fails to comply with any of the indemnification or insurance requirements of this Contract, and such failure to comply results in any costs to the County, the Contractor shall pay full compensation for all costs incurred by the County.

8.25.6 Insurance Coverage Requirements for Subcontractors:

The Contractor shall ensure any and all subcontractors performing services under this Contract meet the insurance requirements of this Contract by either:

- The Contractor providing evidence of insurance covering the activities of subcontractors, or
- The Contractor providing evidence submitted by subcontractors evidencing that subcontractors maintain the required insurance coverage. The County retains the right to obtain copies of evidence of subcontractor insurance coverage at any time.

8.26 INSURANCE COVERAGE REQUIREMENTS

8.26.1 General Liability insurance written on ISO policy form CG 00

01 or its equivalent with limits of not less than the following:

General Aggregate:	\$2 million
Products/Completed Operations Aggregate:	\$1 million
Personal and Advertising Injury:	\$1 million
Each Occurrence:	\$1 million

8.26.2 Automobile Liability written on ISO policy form CA 00 01 or its equivalent with a limit of liability of not less than \$1 million for each accident. Such insurance shall include coverage for all "owned", "hired" and "non-owned" vehicles, or coverage for "any auto".

8.26.3 Workers' Compensation and Employers' Liability

insurance providing workers' compensation benefits, as required by the Labor Code of the State of California or by any other state, and for which the Contractor is responsible. If the Contractor's employees will be engaged in maritime employment, coverage shall provide workers' compensation benefits as required by the U.S. Longshore and Harbor Workers' Compensation Act, Jones Act or any other federal law for which the Contractor is responsible.

In all cases, the above insurance also shall include Employers' Liability coverage with limits of not less than the following:

Each Accident:	\$1 million
Disease - policy limit:	\$1 million
Disease - each employee:	\$1 million

8.27 LIQUIDATED DAMAGES

8.27.1 If, in the judgment of the Library, the Contractor breaches the Contract requirements as specified in the *Performance Requirements Summary (PRS) Chart*, as defined in *Appendix C, Technical Exhibit 2*, hereunder, the County will have a claim for the sum specified in the PRS, to be paid by the Contractor in accordance with the Contract as liquidated damages. The Director, or his/her designee shall notify Contractor in writing of the specific instances and areas of noncompliance and/or nonperformance and the corresponding unsatisfactory performance deductions.

8.27.2 This Sub-paragraph shall not, in any manner, restrict or limit the County's right to damages for any breach of this Contract provided by law or as specified in the PRS, and shall not, in any manner, restrict or limit the County's right to terminate this Contract as agreed to herein.

8.28 MOST FAVORED PUBLIC ENTITY

If the Contractor's prices decline, or should the Contractor at any time during the term of this Contract provide the same goods or services under similar quantity and delivery conditions to the State of California or any county, municipality, or district of the State at prices below those set forth in this Contract, then such lower prices shall be immediately extended to the County.

8.29 NONDISCRIMINATION AND AFFIRMATIVE ACTION

8.29.1 The Contractor certifies and agrees that all persons employed by it, its affiliates, subsidiaries, or holding companies are and shall be treated equally without regard to or because of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations.

8.29.2 The Contractor shall certify to, and comply with, the provisions of *Exhibit D - Contractor's EEO Certification*.

8.29.3 The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, in compliance with all applicable Federal and State anti-discrimination laws and regulations. Such action shall include, but is not limited to: employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

8.29.4 The Contractor certifies and agrees that it will deal with its subcontractors, bidders, or vendors without regard to or because of race, color, religion, ancestry, national origin, sex,

age, or physical or mental disability, marital status, or political affiliation.

- 8.29.5 The Contractor certifies and agrees that it, its affiliates, subsidiaries, or holding companies shall comply with all applicable Federal and State laws and regulations to the end that no person shall, on the grounds of race, color, religion, ancestry, national origin, sex, age, physical or mental disability, marital status, or political affiliation, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this Contract or under any project, program, or activity supported by this Contract.
- 8.29.6 The Contractor shall allow County representatives access to the Contractor's employment records during regular business hours to verify compliance with the provisions of this Sub-paragraph 8.28 when so requested by the County.
- 8.29.7 If the County finds that any provisions of this Sub-paragraph 8.28 have been violated, such violation shall constitute a material breach of this Contract upon which the County may terminate or suspend this Contract. While the County reserves the right to determine independently that the anti-discrimination provisions of this Contract have been violated, in addition, a determination by the California Fair Employment Practices Commission or the Federal Equal Employment Opportunity Commission that the Contractor has violated Federal or State anti-discrimination laws or regulations shall constitute a finding by the County that the Contractor has violated the anti-discrimination provisions of this Contract.
- 8.29.8 The parties agree that in the event the Contractor violates any of the anti-discrimination provisions of this Contract, the

County shall, at its sole option, be entitled to the sum of Five Hundred Dollars (\$500) for each such violation pursuant to California Civil Code Section 1671 as liquidated damages in lieu of terminating or suspending this Contract.

8.30 NON EXCLUSIVITY

Nothing herein is intended nor shall be construed as creating any exclusive arrangement with Contractor. This Contract shall not restrict the Library from acquiring similar, equal or like goods and/or services from other entities or sources.

8.31 NOTICE OF DELAYS

Except as otherwise provided under this Contract, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this Contract, that party shall, within one (1) day, give notice thereof, including all relevant information with respect thereto, to the other party.

8.32 NOTICE OF DISPUTES

The Contractor shall bring to the attention of the County Project Manager and/or County Project Director any dispute between the County and the Contractor regarding the performance of services as stated in this Contract. If the County Project Manager or County Project Director is not able to resolve the dispute, the County Librarian, or designee shall resolve it.

8.33 NOTICE TO EMPLOYEES REGARDING THE FEDERAL EARNED INCOME CREDIT

The Contractor shall notify its employees, and shall require each subcontractor to notify its employees, that they may be eligible for the Federal Earned Income Credit under the federal income tax laws. Such notice shall be provided in accordance with the requirements set forth in Internal Revenue Service Notice No. 1015.

8.34 NOTICES

All notices or demands required or permitted to be given or made under this Contract shall be in writing and shall be hand delivered with signed receipt or mailed by first-class registered or certified mail, postage prepaid, addressed to the parties as identified in *Exhibits E, County's Administration and F, Contractor's Administration*. Addresses may be changed by either party giving ten (10) days' prior written notice thereof to the other party. The County Librarian shall have the authority to issue all notices or demands required or permitted by the County under this Contract.

8.35 PUBLIC RECORDS ACT

- 8.35.1 Any documents submitted by Contractor; all information obtained in connection with the County's right to audit and inspect Contractor's documents, books, and accounting records pursuant to *Sub-paragraph 8.36 - Record Retention and Inspection/Audit Settlement* of this Contract; as well as those documents which were required to be submitted in response to the Request for Proposals (RFP) used in the solicitation process for this Contract, become the exclusive property of the County. All such documents become a matter of public record and shall be regarded as public records. Exceptions will be those elements in the California Government Code Section 6250 et seq. (Public Records Act) and which are marked "trade secret", "confidential", or "proprietary". The County shall not in any way be liable or responsible for the disclosure of any such records including, without limitation, those so marked, if disclosure is required by law, or by an order issued by a court of competent jurisdiction.
- 8.35.2 In the event the County is required to defend an action on a Public Records Act request for any of the aforementioned documents, information, books, records, and/or contents of a

proposal marked "trade secret", "confidential", or "proprietary", the Contractor agrees to defend and indemnify the County from all costs and expenses, including reasonable attorney's fees, in action or liability arising under the Public Records Act.

8.36 PUBLICITY

8.36.1 The Contractor shall not disclose any details in connection with this Contract to any person or entity except as may be otherwise provided hereunder or required by law. However, in recognizing the Contractor's need to identify its services and related clients to sustain itself, the County shall not inhibit the Contractor from publishing its role under this Contract within the following conditions:

- The Contractor shall develop all publicity material in a professional manner; and
- During the term of this Contract, the Contractor shall not, and shall not authorize another to, publish or disseminate any commercial advertisements, press releases, feature articles, or other materials using the name of the County without the prior written consent of the County's Project Director. The County shall not unreasonably withhold written consent.

8.36.2 The Contractor may, without the prior written consent of County, indicate in its proposals and sales materials that it has been awarded this Contract with the County of Los Angeles, provided that the requirements of this *Sub-paragraph 8.35* shall apply.

8.37 RECORD RETENTION AND INSPECTION/AUDIT SETTLEMENT

The Contractor shall maintain accurate and complete financial records of its activities and operations relating to this Contract in accordance with generally accepted accounting principles. The Contractor shall also maintain accurate and complete employment and other records

relating to its performance of this Contract. The Contractor agrees that the County, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy, or transcribe any pertinent transaction, activity, or records relating to this Contract. All such material, including, but not limited to, all financial records, timecards and other employment records, and proprietary data and information, shall be kept and maintained by the Contractor and shall be made available to the County during the term of this Contract and for a period of five (5) years thereafter unless the County's written permission is given to dispose of any such material prior to such time. All such material shall be maintained by the Contractor at a location in Los Angeles County, provided that if any such material is located outside Los Angeles County, then, at the County's option, the Contractor shall pay the County for travel, per diem, and other costs incurred by the County to examine, audit, excerpt, copy, or transcribe such material at such other location.

8.37.1 In the event that an audit of the Contractor is conducted specifically regarding this Contract by any Federal or State auditor, or by any auditor or accountant employed by the Contractor or otherwise, then the Contractor shall file a copy of such audit report with the County's Auditor-Controller within thirty (30) days of the Contractor's receipt thereof, unless otherwise provided by applicable Federal or State law or under this Contract. The County shall make a reasonable effort to maintain the confidentiality of such audit report(s).

8.37.2 Failure on the part of the Contractor to comply with any of the provisions of this Sub-paragraph 8.36 shall constitute a material breach of this Contract upon which the County may terminate or suspend this Contract.

8.37.3 If, at any time during the term of this Contract or within five (5) years after the expiration or termination of this Contract,

representatives of the County may conduct an audit of the Contractor regarding the work performed under this Contract, and if such audit finds that the County's dollar liability for any such work is less than payments made by the County to the Contractor, then the difference shall be either: a) repaid by the Contractor to the County by cash payment upon demand or b) at the sole option of the County's Auditor-Controller, deducted from any amounts due to the Contractor from the County, whether under this Contract or otherwise. If such audit finds that the County's dollar liability for such work is more than the payments made by the County to the Contractor, then the difference shall be paid to the Contractor by the County by cash payment, provided that in no event shall the County's maximum obligation for this Contract exceed the funds appropriated by the County for the purpose of this Contract.

8.38 RECYCLED BOND PAPER

Consistent with the Board of Supervisors' policy to reduce the amount of solid waste deposited at the County landfills, the Contractor agrees to use recycled bond paper to the maximum extent possible on this Contract.

8.39 SAFELY SURRENDERED BABY LAW

Notice to Employees Regarding the Safely Surrendered Baby Law

The Contractor shall notify and provide to its employees, and shall require each subcontractor to notify and provide to its employees, a fact sheet regarding the Safely Surrendered Baby Law, its implementation in Los Angeles County, and where and how to safely surrender a baby. The fact sheet is set forth in *Exhibit J* of this Contract and is also available on the Internet at www.babysafela.org for printing purposes.

8.40 SUBCONTRACTING

- 8.40.1 The requirements of this Contract may not be subcontracted by the Contractor **without the advance approval of the County**. Any attempt by the Contractor to subcontract without the prior consent of the County may be deemed a material breach of this Contract.
- 8.40.2 If the Contractor desires to subcontract, the Contractor shall provide the following information promptly at the County's request:
- A description of the work to be performed by the subcontractor;
 - A draft copy of the proposed subcontract; and
 - Other pertinent information and/or certifications requested by the County.
- 8.40.3 The Contractor shall indemnify and hold the County harmless with respect to the activities of each and every subcontractor in the same manner and to the same degree as if such subcontractor(s) were Contractor employees.
- 8.40.4 The Contractor shall remain fully responsible for all performances required of it under this Contract, including those that the Contractor has determined to subcontract, notwithstanding the County's approval of the Contractor's proposed subcontract.
- 8.40.5 The County's consent to subcontract shall not waive the County's right to prior and continuing approval of any and all personnel, including subcontractor employees, providing services under this Contract. The Contractor is responsible to notify its subcontractors of this County right.
- 8.40.6 The County's Project Director is authorized to act for and on behalf of the County with respect to approval of any subcontract and subcontractor employees.

8.40.7 The Contractor shall be solely liable and responsible for all payments or other compensation to all subcontractors and their officers, employees, agents, and successors in interest arising through services performed hereunder, notwithstanding the County's consent to subcontract.

8.40.8 The Contractor shall obtain certificates of insurance, which establish that the subcontractor maintains all the programs of insurance required by the County from each approved subcontractor. The Contractor shall ensure delivery of all such documents to the Contract Project Manager before any subcontractor employee may perform any work hereunder.

8.41 TERMINATION FOR BREACH OF WARRANTY TO MAINTAIN CHILD SUPPORT COMPLIANCE

Failure of the Contractor to maintain compliance with the requirements set forth in *Sub-paragraph 8.15 - Contractor's Warranty of Adherence to County's Child Support Compliance Program*, shall constitute a default by the Contractor under this Contract. Without limiting the rights and remedies available to the County under any other provision of this Contract, failure to cure such default within 90 days of notice by the Los Angeles County Child Support Services Department shall be grounds upon which the Board of Supervisors may terminate this Contract pursuant to *Sub-paragraph 8.42 - Termination for Default*.

8.42 TERMINATION FOR CONVENIENCE

8.42.1 This Contract may be terminated, in whole or in part, from time to time, when such action is deemed by the County, in its sole discretion, to be in its best interest. Termination of work hereunder shall be effected by notice of termination to Contractor specifying the extent to which performance of work is terminated and the date upon which such termination becomes effective. The date upon which such termination

becomes effective shall be no less than ten (10) days after the notice is sent.

8.42.2 After receipt of a notice of termination and except as otherwise directed by the County, the Contractor shall:

- Stop work under this Contract on the date and to the extent specified in such notice, and
- Complete performance of such part of the work as shall not have been terminated by such notice.

8.42.3 All material including books, records, documents, or other evidence bearing on the costs and expenses of the Contractor under this Contract shall be maintained by the Contractor in accordance with *Sub-paragraph 8.36, Record Retention & Inspection/Audit Settlement*.

8.43 TERMINATION FOR DEFAULT

8.43.1 The County may, by written notice to the Contractor, terminate the whole or any part of this Contract, if, in the judgment of County's Project Director:

- Contractor has materially breached this Contract;
- Contractor fails to timely provide and/or satisfactorily perform any task, deliverable, service, or other work required either under this Contract; or
- Contractor fails to demonstrate a high probability of timely fulfillment of performance requirements under this Contract, or of any obligations of this Contract and in either case, fails to demonstrate convincing progress toward a cure within five (5) working days (or such longer period as the County may authorize in writing) after receipt of written notice from the County specifying such failure.

8.43.2 In the event that the County terminates this Contract in whole or in part as provided in Sub-paragraph 8.41.1, the County may procure, upon such terms and in such manner as the

County may deem appropriate, goods and services similar to those so terminated. The Contractor shall be liable to the County for any and all excess costs incurred by the County, as determined by the County, for such similar goods and services. The Contractor shall continue the performance of this Contract to the extent not terminated under the provisions of this sub-paragraph.

- 8.43.3 Except with respect to defaults of any subcontractor, the Contractor shall not be liable for any such excess costs of the type identified in *Sub-paragraph 8.42.2* if its failure to perform this Contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not limited to: acts of God or of the public enemy, acts of the County in either its sovereign or contractual capacity, acts of Federal or State governments in their sovereign capacities, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case, the failure to perform must be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if such default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any such excess costs for failure to perform, unless the goods or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required performance schedule. As used in this *Sub-paragraph 8.42.3*, the terms "subcontractor" and "subcontractors" mean subcontractor(s) at any tier.

8.43.4 If, after the County has given notice of termination under the provisions of this *Sub-paragraph 8.42*, it is determined by the County that the Contractor was not in default under the provisions of this *Sub-paragraph 8.42*, or that the default was excusable under the provisions of *Sub-paragraph 8.42.3*, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to *Sub-paragraph 8.41 - Termination for Convenience*.

8.43.5 In the event the County terminates this Contract in its entirety due to the Contractor's default as provided in *Sub-paragraph 8.42.1*, the Contractor and the County agree that the County will have actual damages, which are extremely difficult to calculate and impracticable to fix and which will include, but are not limited to, the County's costs of procurement of replacement services and costs incurred due to delays in procuring such services. Therefore, the Contractor and the County agree that the County shall, at its sole option and in lieu of the provisions of *Sub-paragraph 8.42.2*, be entitled to liquidated damages from the Contractor, pursuant to California Civil Code Section 1671, in the amount of Five Thousand Dollars (\$5,000) or five percent (5%) of the applicable year's Contract sum, whichever is less, as equitable compensation to the County for such actual damages. This amount of liquidated damages shall be either paid by the Contractor to the County by cash payment upon demand or, at the sole discretion of the Library, or designee, deducted from any amounts due to the Contractor by the County, whether under this Contract or otherwise.

These liquidated damages shall be in addition to any credits, which the County is otherwise entitled to under this Contract, and the Contractor's payment of these liquidated damages

shall not in any way change, or affect the provisions of *Sub-paragraph 8.23 - Indemnification*.

- 8.43.6 The rights and remedies of the County provided in this Sub-paragraph 8.42 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

8.44 TERMINATION FOR IMPROPER CONSIDERATION

- 8.44.1 The County may, by written notice to the Contractor, immediately terminate the right of the Contractor to proceed under this Contract if it is found that consideration, in any form, was offered or given by the Contractor, either directly or through an intermediary, to any County officer, employee, or agent with the intent of securing this Contract or securing favorable treatment with respect to the award, amendment, or extension of this Contract or the making of any determinations with respect to the Contractor's performance pursuant to this Contract. In the event of such termination, the County shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of default by the Contractor.
- 8.44.2 The Contractor shall immediately report any attempt by a County officer or employee to solicit such improper consideration. The report shall be made either to the County manager charged with the supervision of the employee or to the County Auditor-Controller's Employee Fraud Hotline at (213) 974-0914 or (800) 544-6861.
- 8.44.3 Among other items, such improper consideration may take the form of cash, discounts, service, the provision of travel or entertainment, or tangible gifts.

8.45 TERMINATION FOR INSOLVENCY

8.45.1 The County may terminate this Contract forthwith in the event of the occurrence of any of the following:

- Insolvency of the Contractor. The Contractor shall be deemed to be insolvent if it has ceased to pay its debts for at least sixty (60) days in the ordinary course of business or cannot pay its debts as they become due, whether or not a petition has been filed under the Federal Bankruptcy Code and whether or not the Contractor is insolvent within the meaning of the Federal Bankruptcy Code;
- The filing of a voluntary or involuntary petition regarding the Contractor under the Federal Bankruptcy Code;
- The appointment of a Receiver or Trustee for the Contractor; or
- The execution by the Contractor of a general assignment for the benefit of creditors.

8.45.2 The rights and remedies of the County provided in this *Subparagraph 8.44* shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

8.46 TERMINATION FOR NON-ADHERENCE OF COUNTY LOBBYIST ORDINANCE

The Contractor, and each County Lobbyist or County Lobbying firm as defined in County Code Section 2.160.010 retained by the Contractor, shall fully comply with the County's Lobbyist Ordinance, County Code Chapter 2.160. Failure on the part of the Contractor or any County Lobbyist or County Lobbying firm retained by the Contractor to fully comply with the County's Lobbyist Ordinance shall constitute a material breach of this Contract, upon which the County may in its sole discretion, immediately terminate or suspend this Contract.

8.47 TERMINATION FOR NON-APPROPRIATION OF FUNDS

Notwithstanding any other provision of this Contract, the County shall not be obligated for the Contractor's performance hereunder or by any provision of this Contract during any of the County's future fiscal years unless and until the County's Board of Supervisors appropriates funds for this Contract in the County's Budget for each such future fiscal year. In the event that funds are not appropriated for this Contract, then this Contract shall terminate as of June 30 of the last fiscal year for which funds were appropriated. The County shall notify the Contractor in writing of any such non-allocation of funds at the earliest possible date.

8.48 VALIDITY

If any provision of this Contract or the application thereof to any person or circumstance is held invalid, the remainder of this Contract and the application of such provision to other persons or circumstances shall not be affected thereby.

8.49 WAIVER

No waiver by the County of any breach of any provision of this Contract shall constitute a waiver of any other breach or of such provision. Failure of the County to enforce at any time, or from time to time, any provision of this Contract shall not be construed as a waiver thereof. The rights and remedies set forth in this Sub-paragraph 8.48 shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

8.50 WARRANTY AGAINST CONTINGENT FEES

8.50.1 The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon any Contract or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling

8.50.2 For breach of this warranty, the County shall have the right to terminate this Contract and, at its sole discretion, deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

/ / / / / / / / / / / / / / / /

IN WITNESS WHEREOF, Contractor has executed this Contract, or caused it to be duly executed and the County of Los Angeles, by order of its Board of Supervisors has caused this Contract to be executed on its behalf by the Chair of said Board and attested by the Executive Officer-Clerk of the Board of Supervisors thereof, the day and year first above written.

CONTRACTOR:
Maxim Building Care, Inc.

By _____
Howard Yang, President

COUNTY OF LOS ANGELES

By _____
Chairman, Board of Supervisors

ATTEST:

VIOLET VARONA-LUKENS
Executive Officer-Clerk
of the Board of Supervisors

By _____

APPROVED AS TO FORM:

OFFICE OF THE COUNTY COUNSEL

By _____
Helen S. Parker
Principal Deputy County Counsel